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Most Microsoft Foes Won't Criticize Settlement for Fear of Retaliation

SAN JOSE, Calif. -- Not many high-tech companies talk openly about the proposed Microsoft antitrust settlement. Even fewer criticize the deal in public, despite private misgivings.

They still, after all, must work with the world's largest software maker, which controls the operating systems of more than 90 percent of desktop computers and can play a big role in the fate of their businesses.

The exceptions are the usual suspects -- mainly those companies that possess enough clout, money and muscle to risk a run-in with the software giant.

The most outspoken critics include database powerhouse Oracle Corp. and Unix server king Sun Microsystems Inc. Both dominate their core markets despite Microsoft's efforts.

Larry Ellison, Oracle's billionaire chief executive, told a crowd at the Comdex computer show in Las Vegas this week that the settlement is "a complete victory for Microsoft, a complete defeat for the government. I give Microsoft credit for keeping a straight face."

Sun's chief, Scott McNealy, also expressed outrage that the Department of Justice -- after winning the case -- seemed to snatch defeat from the jaws of victory.

It is not just provisions riddled with loopholes or toothless enforcement. The deal indicates an unwillingness of the government to police antitrust crimes, critics say.

"The only thing I can conclude is either the Justice Department didn't know what it was doing or they did know and just decided to give up," said Michael Morris, Sun's vice president and general counsel.

Microsoft declined to answer specific questions about the deal, but co-founder Bill Gates has said the company will accept its strictures.

Most companies that must work with or compete against the software giant either refused to elaborate beyond short written statements, or remained silent altogether.

Real Networks, which makes streaming media software, declined to comment beyond a short statement, which called the settlement a reward not a remedy. Ditto for AOL Time Warner, Palm and Novell. Others, including software-maker Adobe Inc., computer-maker Apple Computer Inc. and chipmaker Intel Corp. refused to make any statements at all.

Major PC manufacturers also were silent.

Only a handful of other high-tech companies would discuss specific reasons for their opposition to the settlement.

Opera Software ASA had little to lose.

The Norway-based company long ago gave up on persuading PC makers to install its critically acclaimed Web browser on new PCs. Microsoft's exclusive deals had already shut it out of the market.

Opera might benefit from the settlement under some provisions that allow computer makers to install non-Microsoft "middleware" such as Web browsers. But only the links to Microsoft software could be removed, not the programs themselves. That means Microsoft could set itself up as the default system despite any agreements with PC and software makers.

"We're not being extremely hopeful that this is going to open up a lot of doors in the PC marketplace," said Jon von Tetzchner, Opera's chief executive.

At any rate, the same PC makers that won't comment on the settlement probably aren't interested in raising the ire of Microsoft, even if retribution is barred in the settlement.

"There are loopholes," von Tetzchner said. "And there's the practice of life. All of those companies will think twice before upsetting Microsoft."

The entire debate over what Microsoft can do and cannot do appears to be rendered moot: Under the settlement, Microsoft can define what comprises the Windows operating system "in its sole discretion."

Companies also might be reluctant to talk because the deal allows Microsoft to keep from its competitors the critical details about how programs and operating systems can function best in a Windows environment.

Software programs are intricate tapestries. To function smoothly when running on top of an operating system such as Windows, the stitches that link an application with the operating system must be snug and seamless.

Competitors complain that because Microsoft was not compelled to immediately reveal to them how to make those stitches, it will continue to dominate in such areas as word processing, spreadsheets and e-mail.

"This settlement does not remedy the monopoly. It legitimizes it," said Michael Tiemann, chief technical officer at Red Hat Inc., a distributor of a variant of Linux, a competing operating system whose basic code is open and public.

Microsoft has a history of undermining software projects backed by consortia of major tech companies that aim to create applications that work well with a variety of operating systems, potentially threatening the Windows monopoly.

The company infuriated promoters of Java when it created Microsoft-specific versions of the programming language in the late 1990s. This year, Microsoft changed and patented a protocol used by

Samba, open-source software that lets a Linux machine share files or manage print jobs such as a Windows server.

"The whole concept of a free market is to allow fair and open competition and to permit customers to make choices," Tiemann said.

Drew Spencer, chief technology officer of Orem's Caldera International, a Linux provider, worries that Microsoft won't release enough information to allow alternative platforms to participate in upcoming Web services.

Steven McGeady, a former Intel Corp. vice president who made headlines during the antitrust trial for testifying against Microsoft, said the deal only reinforces his own, post-Intel business strategy.

"Competing with Microsoft head-on is a bad business practice," he said. "And it would be a bad business practice regardless of any of the potential remedies."

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